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PRESIDENTIAL INABILITY.

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MR. TRUMBULL.

THE protracted illness of President Garfield led to much discussion and a variety of opinions as to what constitutes a disability in the Presidential office which will justify the Vice-president in assuming its duties.

President Garfield's death renders unnecessary a practical decision of the question in his case; but the time may come when it will have to be decided, and it is of importance that, before that time arrives, the Constitution in that regard should, if possible, receive a definite and fixed construction, so that when it does arrive, the people of this Republic may be spared a controversy as to the person entitled to the chief magistracy—a controversy which among other peoples has brought upon mankind more wars and greater desolation than any other cause. The provisions of the Constitution bearing upon this subject are the following:

"In case of the removal of the President from office, or his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-president." " . . . No person except a natu-

ral born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President." " . . . The Vice-president of the United States shall be president of the Senate." " . . . The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-president, or when he shall exercise the office of President of the United States."

The Twelfth Amendment, adopted in 1804, declares:

"If the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March, next following, then the Vice-president shall act as President, as in the case of the death or other constitutional disability of the President." " . . . No person constitutionally ineligible to the office of President shall be eligible to that of Vice-president."

Preliminary to a discussion of what constitutes Presidential inability, it is important to determine the position of a Vice-president, who, in the language of the Constitution, "shall *exercise* the office of President," or "shall *act* as President." That is, whether in such case he becomes "the President" or remains Vice-president, exercising the powers and duties of President. In 1841, when, on the death of President Harrison, the first vacancy occurred in the Presidential office, and the question arose in Congress whether, in appointing a committee to inform the person then exercising the office of President, of the organization of the two Houses, he should be styled "President," or "Vice-president now exercising the office of President," Mr. Wise, of Virginia, exclaimed that "he knew the fact, that the present incumbent [Mr. Tyler] would claim the position that he was by the Constitution, by election, and by the act of God, President of the United States." The subject received but little consideration at the time in either House of Congress, and as the case then presented was one of death, both Houses decided to give the title President to the person exercising the duties of the office, in their communications with him—Mr. Calhoun remarking at the time that, as none of those circumstances existed which might arise in a case of inability, "there could be no special occasion for discussing the subject." From that time till the present, whenever the Vice-president has acted as President, which has never been except in the case of the death of the President, he has been styled President. The practice adopted under the circumstances, though entitled to consideration, is not decisive as to the true construction of the Constitution, even in case of death,

and by no means settles it in a case of inability. As an original question, it would seem clear, from the language of the Constitution, that its framers never intended any person to be President except the person whom the people elected to that office. They provided that, in certain specified cases, another officer might perform the duties of the President, without regard to his eligibility to the office.

The original Constitution did not prescribe the qualifications of age and citizenship of Vice-president as it did of President. Hence a Vice-President not eligible to the Presidency might, under the Constitution as it existed prior to 1804, have had devolved upon him the powers and duties of the Presidential office; but how could he become President? Even now the Constitution does not prescribe the qualifications of the officer who is to act as President in case of the death both of the President and Vice-president. He may be a person not eligible to the Presidency. The Constitution must be so construed as to be consistent with itself, which would be impossible if a person not eligible to the office of President could in any case become President. That instrument contains no provision declaring that the Vice-president shall under any circumstances become President. On the contrary, it in terms declares that in certain specified cases "the powers and duties of the said office" shall devolve on the Vice-president; that "he shall *exercise* the office of President" and "shall *act* as President." On whom is it that the Constitution in certain cases devolves the duties of the Presidential office? Is it on another President or on the Vice-president? Had the framers of the Constitution intended the Vice-president in certain contingencies to become President, they would have so said, instead of saying as they did, "he shall exercise the office of President, or "he shall act as President."

Assuming, as the language of the Constitution imports, that the Vice-president can in no event become President, there is less practical difficulty in determining what is meant by Presidential inability. If, in such a case, the Vice-president became President, the person whom the people elected to that office, though laboring under a mere temporary inability, would be ousted from the office whenever the Vice-president assumed its duties, as there could not be two Presidents at the same time, and the person elected Vice-president, having ceased to be such by becoming President, would continue Pres-

ident till the end of the term. Whereas, if the Vice-president in such case simply exercises the office of, or acts as President, there could be no reason why the President, when the inability ceased, should not resume the duties of his office; and the Vice-president, having ceased to act as President, would again become president of the Senate. The word "inability," as used in the Constitution, doubtless means both physical and mental inability, or either. Whenever the President, whether from physical causes, as in case of capture by the enemy in time of war, or from sickness, or from mental disease, is unable to discharge the duties of his office, the Constitution devolves them on the Vice-president. Before he can properly act, there must be some occasion for his action — some urgent duty to perform to which the President is unable, from mental or physical causes, to give attention. The framers of the Constitution clearly intended to provide that the Republic should suffer no detriment from the want of an executive head. If, during the illness of President Garfield, circumstances had arisen requiring of him the performance of important duties, such as the negotiation of treaties, the defense of the country, or, indeed, any act to delay which would be fraught with serious injury to the country, and he had been unable to act, the case of inability contemplated by the Constitution would seem to have arisen. The presumption is that no such circumstances existed. But how is the Vice-president to know of their existence in any case? In the absence of legislation he can only know, so as to act upon them, when they become so open, notorious, and indisputable as to be recognized by all as existing. When such a case arises, who will question the right or the duty of the Vice-president to act as President till the disability is removed? The Constitution has provided no tribunal to determine what shall constitute inability, or the evidence of it, and it will be difficult for Congress to do so. It would be dangerous to vest the power of thus superseding the President in a petit jury, or any judicial tribunal. The people who elect him have said that he can only be removed on impeachment, and Congress cannot provide for his removal directly or indirectly in any other way. They can prevent neither his death, his resignation, nor his inability, and they have never attempted to declare what shall be the evidence of his death, though they have passed a law of questionable constitutionality, declaring that the only evidence of his resignation shall be an instrument

in writing declaring the same, subscribed by him, and delivered into the office of the Secretary of State. Four Presidents have died in office, and it required no statute to define in advance what should constitute the evidence of their death, nor any jury of inquest or other tribunal to determine when they died. To have required such proof would have been unreasonable and absurd. The whole people and all their officials took notice of the sad events, and the Vice-president in each case proceeded to exercise the powers and duties of the Presidential office without question from a human being. There are some things of which everybody takes notice, and which it is never necessary to prove. Among them are public matters affecting the government of the country. Every one is bound to know who is President, and to take notice of his death. As a matter of convenience and propriety, it has been customary, on the death of the President, for his constitutional advisers, who are supposed to be near him at the time, to inform the Vice-president of the fact. While this is a proper thing to do, it is not essential to his entering upon the discharge of the duties of the Presidential office. So in case of inability, the fact must be so notorious that there can be no reasonable doubt about it, nor that an urgency exists requiring immediate action on important matters, before the Vice-president would be warranted in assuming the duties of President.

When such a case arises, the people will not only acquiesce in the discharge of the Presidential duties by the Vice-president, but will demand that he exercise them. In a case of inability, as in a case of death, the constitutional advisers of the President, who are about him, might with great propriety notify the Vice-president of the fact, and of the state of the public business requiring Presidential action, and this, though not conclusive, would be one circumstance going to make up that public opinion which would make it incumbent on the Vice-president to act as President. It is questionable whether any law can be framed placing this question of inability in a better position than the Constitution has left it. The degree of proof to satisfy the public mind cannot be previously defined. This is a people's government, and can only be maintained by the will of the people. Every citizen of the Republic constitutes a part of the law-making power. Hence the respect of all for the law, and their readiness at all times to uphold and defend it. They take notice of public matters affecting the government of the country,

of who is President, of his death or inability, and of the accession of another to the duties of President.

When this accession follows the notorious and unquestioned inability of the President, they will be as ready to uphold the Vice-president in the discharge of the duties of the Presidential office as if he had been elected to it. Any Vice-president who should assume those duties in a doubtful case, when the exigency did not unmistakably require it, would be treated as a usurper by all patriotic citizens. Peaceful successions to the Presidency, under our system of government, must always depend on a sound public opinion, supported by the good sense and the intelligence of the people; and there it may be safest to leave them.

LYMAN TRUMBULL.

MR. COOLEY.

THE Constitution provides that "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the duties of the said office, the same shall devolve on the Vice-president." Three of the contingencies here mentioned are cases in which the President's incumbency is absolutely terminated, and, according to the precedents, the Vice-president does not then succeed merely to the powers and duties of President, but becomes the incumbent of the office.

The fourth contingency, of "inability to discharge the duties of the said office," supposes a state of things that may be permanent or temporary. If it should occur, and the duties devolve upon the Vice-president in consequence, the latter would be acting President only, for the manifest reason that there would still be a President who had not in any manner vacated the office, though for the time unable to discharge the duties.

The question, What is a case of inability? is a momentous one, and not to be disposed of lightly or on any narrow or technical reasoning. It is a question involving the stability of government and the interests of the whole people. The words to be interpreted are part of an instrument which is supposed to deal only with general principles and matters of highest importance, and to leave all else to ordinary legislation. We must therefore assume that this provision was inserted for contingencies so

important as to render the devolution of the President's powers upon some other officer an absolute necessity.

In one sense, the President would be under inability to discharge the powers and duties of his office if he were in the delirium of fever, though there might be no reason to believe the delirium would last beyond a few hours. His constitutional advisers would not venture to present an official document for his signature at such a time, or permit any one to approach him on public affairs; and if in his delirium he were to sign a document or veto a bill without the consciousness of reason, he and every one else might treat the act afterward as a nullity, as he might if he had done it in a state of somnambulism.

It seems unnecessary to affirm that a case of merely temporary displacement of reason cannot be such a case of inability as the Constitution intends. If the Vice-president were immediately to come forward under such circumstances, and claim the right to perform the duties of the office, the common sense of the nation would feel a shock of pain and surprise at such a misconstruction of this important provision.

If the President were to be prostrated by sunstroke, and lie for a day or a week in a state of insensibility, there would be a plain case of present inability to act; but who believes that the Constitution intends the Vice-president shall immediately take up the reins of power, and displace the President before it is seen that the public interest requires it?

But a case of even present inability may not be so plain as those which have been indicated. The reason is sometimes dethroned by slow approaches of disease, and then gradually restored again; and the question of the actual mental condition at any particular time may be one of great nicety, which only experts can solve. It is plain there is no inability before the reason is overturned and none after it is restored; and the exact condition at any time is very likely to be the subject of differences of opinion among experts. If under such circumstances, with the fact disputed or not generally known, there were to be an attempt to displace the President for inability, it seems certain that it would not be peacefully submitted to. If the Constitution permits a change in the executive under such circumstances, without authoritative decision to the satisfaction of the public mind, it may confidently be affirmed that, instead of providing for the perpetuity of institutions, it has suggested and

invited civil disorders, a contested chief magistracy, and general anarchy.

The question of inability in the constitutional sense is complex, for it necessarily to some extent involves two others: First, whether, when the Vice-president becomes acting President, he is in for the term, or only while the inability continues; and, second, what officer or body shall pass on the question of inability and determine its existence?

The limits assigned to this paper preclude any examination of the first question, and we shall assume it to be unnecessary. The Vice-president is to act when there is inability; and he can do so no more after the inability has ceased than before it commences. From the nature of the case, therefore, the question of inability is continuous; it must be ever present even after the Vice-president has become acting President, and there must at all times be an authority competent to pass upon it. And if this authority is provided for by the Constitution, we must suppose the wise framers of that instrument had in view a tribunal as little liable to be swayed by personal interests and ambitions as is possible in the nature of things. We must suppose this because only such a tribunal could be satisfactory; and the case is peculiarly one in which it is of first importance that the public mind be satisfied.

That a mere temporary inability is not the inability the Constitution intends seems certain, because the evils the Constitution aims to provide against are not immediately present or imminent. They might not be present or imminent if the President's incompetency were to continue for several days or weeks; because there might during that time be no urgent necessity for executive action. To displace a President because he cannot act, when no action is needful, and when it is not known that his incompetency will continue so as to be detrimental, would be as foreign from any suggestion of true statesmanship as it would be possible to conceive. True statesmanship carefully guards against unexpected changes in government, instead of inviting them without apparent or probable benefit.

If, then, a mere temporary inability is not the inability the Constitution intends, we are forced to conclude it must be an inability that from its nature and continuance causes—or at least threatens—inconvenience in public affairs. It is this inconvenience, present or imminent, which will bring the inability to

notice, and require that it be passed upon and provided for. Other circumstances than that of duration may therefore have controlling force.

Had President Lincoln in April, 1861, been prostrated by some mental disorder likely to continue for weeks, the necessity for the constant attention and action of the Executive would have been so imperative that no one could question that the emergency the Constitution intends had arisen. In that time of supreme trial for the country, to leave executive powers in abeyance for a very brief time might have been disastrous. But many times before and since, if the President had withdrawn himself altogether from public business for weeks, or even months, no inconvenience whatever could have resulted, or if any at all, then such as would be utterly insignificant when compared with the mischiefs of a change. The ordinary business of government would have moved on without disorder, taxes would have been received, public debts paid; the courts, the army, and navy would have performed their allotted functions, and the absence of the President from his duties would have attracted attention merely as an item of current news.

To determine, then, whether the constitutional emergency has arisen, we must look beyond the existence of present inability, and consider, first, the question of probable continuance, and, second, the condition of public affairs, and the necessity for executive action. More difficult and delicate questions than these a human tribunal is never called upon to consider, and it would be a reproach to the Constitution and infinitely dangerous in government if these, and the further question of the continuance of the inability, were submitted for determination to any other than the most proper and suitable tribunal. But the Constitution is subject to no such reproach.

In the nature of things there is but one proper and suitable tribunal for making this decision, and the Constitution plainly points it out. Congress is expressly empowered to make all laws which shall be necessary and proper for carrying into execution all the powers vested by the Constitution in the Government of the United States, or in any department or officer thereof. It may, therefore, make laws for this case.

It is especially proper that Congress should have the jurisdiction over this subject, for many reasons, a few of which will be mentioned. Congress, more directly than any other department

or officer, represents public opinion and the public will, and is more likely, in a great crisis which intensely interests the whole people, to give a decision which accords with the public judgment. Congress, better than any other authority, must know what the public exigencies demand, for its legislation deals with them with all the power of the Government. The questions involved in suggested inability must be considered in the light of facts, appearances, opinions, matters of public notoriety—in short, of all those matters which influence the public mind, and a popular body can alone deal with such evidence. If the inability seems likely to be temporary, Congress alone can make provision for determining when it has ceased. If any other authority should declare the inability, and the Vice-president should act upon it in opposition to the opinion of Congress, his authority would be paralyzed by the refusal of Congress to recognize it. No court could help him, for the courts cannot decide political questions. Congress, then, must deal with the question, first, because the Constitution provides for it; second, because reason dictates it; and, third, because the decision of Congress alone can be final.

The difficulties in the way of a Congressional decision will not be overlooked or belittled. It may be said, with truth, that Congress could only act by bill or joint resolution, either of which, before becoming effective, must be presented to the President for his action. To present a bill for approval or veto, by an officer whom the bill itself declares to be incompetent, would be an absurdity. But national powers were conferred in perpetuity, and it is the duty of Congress to see that they are perpetuated. Among the express powers is one to provide for the continuous exercise of executive authority. Now, it is entirely possible that a contingency may arise when there will be no Vice-president, or other officer with any claim under the law to act as President. Must the Union be dissolved and chaos come in consequence? How much wiser would such a notion be than that of James II., who thought that, when he had cast the Great Seal into the Thames, he had made the administration of government impossible? When Congress finds the Union without a head, its first duty is to provide for one; and if an impossibility exists in doing this, according to the very letter of the Constitution, no one need doubt that this is a case in which the spirit of the instrument is more imperative than the letter.

But it may be said, if the emergency should occur when

Congress is not in session, there would be no method of convening it for the purpose. But no American can doubt that, when the case arises and public opinion is firmly fixed in the belief of inability, Congress, if not invited to meet by the cabinet, or the speaker, or the Vice-president, will convene spontaneously to deal with the case and save the institutions intrusted to its care. Men charged with merely business interests would find ways to convene under such circumstances, and it is not likely that statesmen would be lacking who would possess at least ordinary shrewdness and efficiency.

If any one insists upon precedents to justify irregular action, where regular is impossible, we have a right to appropriate English precedents wherever they favor liberty and national perpetuity. The King, in England, is as inseparable a part of the legislature as the President is here; but the most important Parliament in English history, that of 1688, was convened on the invitation of one who was not even an officer or a subject; and it proceeded without executive assent to declare a vacancy, to change the succession, and to settle the government on new principles. The Parliament of 1808, which established the regency, was compelled to assume the concurrence of the King, after it had declared him insane, and that of 1788 would have done the same, had not the King recovered his reason while the Parliament was deliberating. No precedents could be more exactly in point, and none could be more reasonable.

It may be added that, while Congress could provide for such cases by general law, it could have no less power to provide by special law, and that almost inevitably every case would be peculiar, and require to be dealt with specially.

We conclude, therefore, that an inability, in the constitutional sense, is one that not only exists presently, but, in the opinion of Congress, is of such nature and probable continuance that it causes or threatens inconvenience in public affairs. It is possible for a case to arise so plain, and so unmistakably determined in the public judgment, that public opinion, with unanimous concurrence, would summon the Vice-president to act. But, though this would make him acting President *de facto*, he would become acting President *de jure* only after solemn recognition in some form by Congress.

THOMAS M. COOLEY.

MR. BUTLER.

DURING the illness of the President, much discussion of the constitutional provision concerning the Presidential office, and succession, found its way into the newspapers. The wide contrariety of opinion expressed seemed to show that this constitutional enactment had not been too carefully considered.

Intelligent answers to three questions will perhaps solve the difficulties. *First.* What is an inability to discharge the powers and duties of the said (Presidential) office? *Second.* Who is to determine the extent of that inability, so that action can be taken on such determination? *Third.* Who is to discharge the powers and the duties in case of inability?

The latter question would seem to be answered by the words of the Constitution, were it not claimed that a President only can so do. Were it not for this claim, the first question as to what is an inability would be of easy solution. The broad term inability includes everything in the condition of a President which precludes him from the full discharge of the powers and duties of his office. The cases of removal, death, or resignation being specifically provided for by the first words of the clause of the Constitution we are considering, the "inability" must be something either in the bodily or mental condition of a President, while he is President, which prevents his discharge of the duties of the office, or the exercise of its powers,—as examples, if the President is absent from the country, or closely imprisoned, or so prostrated by disease as to be physically incapable of doing his duties. Being in a paralyzed or cataleptic condition of body, while he might retain the faculties of his mind, a President would be unable, *i. e.*, incapable of doing the duties and executing the powers of his office—a strong illustration of an inability. No one could doubt in such case, though his official powers and duties were unexecuted by him, that he would be still President until removed by impeachment because of his physical condition. So, also, if because of mental aberration he was so insane as not to be able to distinguish between right and wrong which is the test of the condition of the mind of one who does an act which in its other elements would be a crime. Such a President, although still in office, would be held to be in a state of constitutional inability. Of these propositions there can be no contest.

But the question has arisen, how long must the President be in

such state of inability before the discharge of the duties and powers of his office devolve upon some other officer? The plain words of the Constitution, "in case of inability to discharge the powers and duties of said office, the same shall devolve upon the Vice-president," being imperative, make it certain that the discharge of these powers and duties becomes immediately the duty of the Vice-president. Cases can be easily put which illustrate and enforce this interpretation to the conviction of the mind of any man.

Suppose the President, being commander-in-chief in time of war, was captured by a foreign foe, would not every one say that from the moment of the capture his power and duties would devolve upon the Vice-president? Who would claim that while in the hands of an enemy the President was able to discharge the powers and duties of commander-in-chief; or that he would have the right to discharge the powers and duties of chief executive by signing a treaty of peace to which he might be forced by torture; or that if he attempted to do such an act under such condition, it would not be held to be beyond his capability?

When the fact of inability is ascertained, as in the extreme cases just put, where it ascertains itself, immediate succession to the duties and powers of the President is as imperatively fixed by the Constitution, once, in every case, as in those extreme cases.

This clause of the Constitution is to be interpreted reasonably, according to the circumstances of the case, in each of which time would be an element. No one would claim that the absence for an hour or a day, or a longer period, of the President from his duties, for any cause which would not disenable him to discharge those duties, would be a case of inability. But if the absence, or other cause of inability, continues until the public good or individual right requires their performance, would not such duties devolve upon the Vice-president? As an illustration of the second branch of the suggestion, suppose the case of conviction and order of execution, by a proper court, of a citizen, should occur where nobody could respite or pardon save the President, or the officer upon whom has devolved the discharge of the powers and duties of the office; and it should also happen that full, perfect, and complete proof of the innocence of the convicted party should make itself manifest, and no application for respite or pardon could be made to the President, by reason of his being

on the high seas, for a temporary purpose, even, beyond timely reach. Would not every consideration of justice and of right compel the interpretation that the official Presidential duty to hear and determine an application for pardon at once devolved upon the Vice-president, and that no ceremony, or taking of oath or inauguration, or publication of adjudication of inability on the part of the President could be required, the delay for which might defeat the very object of the application? And would there be any constitutional difficulty, upon the return of the President, to hinder his resuming the further discharge of the powers and duties of his office, the inability having ceased? There can easily be imagined cases of public necessity great and overwhelming,—as the breaking out of a rebellion or the mutiny of an army, where like and more extended, but not more imperative, necessity might arise for the temporary devolution of the duties and powers of the Presidential office upon the Vice-president, and no more difficulty in their being resumed by the President himself, when the temporary inability had ended.

Suppose Sumter had been fired upon and surrendered just after Mr. Lincoln had embarked on a voyage in search of health across the Atlantic, would the provisions for the safety of the Capitol from seizure by the armed force in rebellion have, of necessity, been delayed for an indefinite period until he could have been found—delayed, perhaps, by the breaking of a shaft, or the obstruction of a storm, for weeks or months? Has not the Constitution made a provision for another officer to act in such cases of Presidential inability? And would not Mr. Lincoln, when he returned, have resumed the powers and duties of his office, although during his inability the Vice-president discharged them?

The second question which I have propounded, Who is to determine the extent of that inability, so that action can be taken on such determination, seems to have been considered one of the greatest intricacy and doubt. In the discussions which I have seen, it has been claimed that the Constitution has made no provision in this regard, and several suggestions, more or less illusory in my judgment, have been put forth, which will not stand criticism. It has been stated that it is for the President, himself, to determine his own inability, and to call upon the Vice-president to act. If the Constitution has placed the determination of one inability with the President under one set of cir-

cumstances, of course it has placed it there in all cases of inability. Again, if the power to ascertain when his inability exists is given by the Constitution to the President, it is one of the duties and powers of his office which he is to discharge. No one would contend that the President is to be sole judge of his own inability by reason of insanity, because if he is sane enough to determine that question, being one of the duties of his office, he is sane enough to perform the other duties, and disability by reason of insanity does not exist. If he is so insane as not to discharge his other duties, he is too insane to discharge this one, and this one, like all others, devolves, by the Constitution, upon the Vice-president.

It has been suggested that his cabinet must determine this question. The Constitution gives no power to the cabinet as such, *i. e.*, the collective body of secretaries—does not even recognize it—as individuals, to determine any questions. Its constitutional power is advisory only, and the President must act at last, and the case supposes the President unable to act, and the advice of his secretary would be thrown away. Again, it is put forth that Congress should determine that question. Passing the difficulty of getting the two Houses together—which, in vacation, cannot be done except by proclamation of the President—and supposing the two Houses to be in session, they have no constitutional power to determine any such question. They can only act legislatively, and no action of theirs has force of law except to themselves, save by act, or joint resolution having the force of an act, either of which, to have force and effect, must be approved by the President. But the approval of an act declaring that the President is unable to perform the duties of his office, and that they devolve upon the Vice-president, would, of itself, be the actual performance of one of the highest executive duties, demonstrating that he was not unable to discharge the duties of his office. This suggestion of the action of Congress seems to me to have arisen from want of consideration of the fact that each act of Congress must have for its validity the concurrent action of the President. But here, again, the case supposes that the President is unable to act, and that both Houses have solemnly so declared. It has also been suggested that a case might be made for the decision of the Supreme Court, but that operation would be so tedious and inapplicable, and without warrant of the Constitution, as to place it beneath criticism.

These theories have been suggested, because it has been supposed that there is no constitutional provision for the decision of this question, and in that state of the question, those holding these views have suggested that Congress be called together by the President to devise some law which he may approve, to meet what they claim to be *casus omissus*.

I confidently maintain that if Congress were called together, and the President were in full health, it would be entirely incompetent, as it would be dangerously inexpedient, for Congress to pass any such law, as well as beyond its constitutional power, because, by the latter clause of the same section of Article II., which we are considering, it is provided as follows:

"And the Congress may by law provide for the case of removal, death, resignation, or inability, *both* of the President and Vice-president, declaring what officer shall then act as President; and such officer shall act accordingly until the disability be removed, or a President shall be elected."

Now, a rule of interpretation of statutes and constitutional law, and more especially as to the latter, always regarded as controlling, is found in the maxim, *inclusio unius, exclusio alterius*. Or, freely translated, a special grant of power is always held to be the withholding of a general grant of power over the same and correlative subject matter. And the Constitution providing expressly what Congress may do in case of inability of *both* President and Vice-president, excludes the idea that Congress may by law add to or diminish the constitutional provision as to what shall be done in case of the inability of the President only, and the constitutional devolution of the duties of his office upon the Vice-president.

Of course Congress, being a legislative body only, could not of itself determine a judicial question — to wit, a question of supposed inability. Perhaps it might erect a tribunal for that purpose; but the danger in that would be that, as political bias always in political questions tinges and colors by predilection or prejudice the conclusions of the highest judicial minds, such tribunals, being beyond reach of impeachment because of any decisions made by them, would be guided by political consideration only as to the expediency of a change of administration, which could be thus made against the will of the people, the very theory of our government being that such changes shall only take place once in four years.

A most striking example of this tendency of the judicial mind was seen in the decision of the judges who composed a part of the Electoral Commission in 1876. Without impugning the motives or judicial fairness of any one, still the striking fact remains that every great question of constitutional law involved in that controversy was decided precisely according to the political relations of the several judges. If the majority were right, it was because they were Republicans. If the minority were wrong, it was because they were Democrats. If either were right, it was because they were politicians.

In my opinion, however, there is no necessity for any action of Congress or anybody else upon this subject, as the Constitution has made a plain, adequate, and proper provision, designating who is to be the judge upon a question of inability of the President to discharge the powers and duties of his office. It may be taken to be axiomatic that when the Constitution imposes a duty on any officer, to be done by him, he must be the sole judge when and how to do that duty, subject only to his responsibility to the people and to the risk of impeachment if he act improperly or corruptly. As we have seen, the Constitution devolves, in a certain case, the discharge of the duties of the President upon the Vice-president. He alone must judge, under the grave responsibility of his position, when his duties begin, as he must determine how and in what manner he will execute them.

If it be said that this is a very heavy responsibility to be placed in the hands of one individual, the cogent answer is that it is certainly no greater than imposing upon the same man the high powers and duties of the Presidential office.

All governmental powers must be reposed at last in some man or body of men. And in bodies acting by majorities, or even when acting with unanimity, all questions may be, and if disputed finally are, decided by one man. For example, in case unanimity is required, as in a jury; the jury does not agree, and nothing is done if one man holds to a contrary opinion from the rest. And it is obvious that all laws may be enacted at last by one vote, as indeed all officers may be chosen by one vote. And this fact is recognized by the Constitution when it provides that the Vice-president shall have the casting vote of the Senate.

But it is said that the Vice-president, in his desire to seize upon power, may be under such influences that it would be unsafe to trust him with the decision of this question of inability.

The fear of danger implied in this proposition arises from another error into which some who have discussed the question have fallen; and that is that the Vice-president cannot discharge the duties of the Presidential office without becoming President, for which proposition there certainly is no constitutional authority.

The Vice-president, the President being alive and able to perform his duties, has but one duty imposed upon him by the Constitution, and that is to preside over the Senate; and that duty is to be performed by him at all times when present, unless "he shall exercise the office of President of the United States."

Now to apply these provisions: So long as the President is living, and has not resigned, or been removed, he must be the President of the United States, and nobody can "exercise that office" but himself. But the powers and duties of the office may devolve upon the Vice-president while the President is unable to discharge them, being alive.

The Constitution plainly presupposes, as I have already suggested, that during inability of the President, the Vice-president shall discharge the Presidential duties as part of the duties of the Vice-president, and, of course, under his oath of office as Vice-president; and that he cannot exercise the office, *i. e.*, cannot become President, the President being alive.

His inability to discharge the duties of his office may cease; and therefore the discharge of the powers and duties of that office, in case the inability of the President is only temporary, is liable to be terminated at any moment when the President's inability ends.

This view is in consonance with the whole theory of an alternative officer in all parliamentary bodies and in all executive offices. For example, the Lord Chancellor, as speaker of the House of Lords, has a deputy who presides in the absence of the Chancellor, and relinquishes his seat at once upon the appearance of the Chancellor, and that whether the Chancellor, during his absence, is able or unable to perform the duties of his office. So with the governors of all our States; the lieutenant-governor comes in under constitutional provisions for the time being only, during the absence or inability of the governor, and no harm has ever come to any State from such provision.

The Constitution itself, by its language already quoted in regard to the inability of *both* President and Vice-president, in

providing that the officer that Congress may elect "shall act as President *until* the inability to act shall be removed, or a President shall be elected," proceeds upon the theory which I have suggested, that the acting officer provided for by Congress, in case of disability of both, shall act temporarily until the disability either is removed, or a President shall be elected. Therefore, the construction I claim here of the constitutional provision in regard to the relations of the President and Vice-president during the inability of the President, is in entire consonance with the practice in regard to all legislative and executive offices, where alternates are provided.

A precisely similar case was contemplated by the Constitution when it was provided that the Senate might elect a President of the Senate *pro tempore* during the absence of the Vice-president, his absence covering the case of his inability, because if he is unable to do the duties, he cannot well be there, and, therefore, is absent.

Criticism suggests that an insane Vice-president might be present in the Senate. That is a technical criticism, and may be answered by the fact that the Vice-president in such case would not be there, his mind being absent.

This interpretation ought to allay the fears of all good people as to the temptation of a Vice-president, in a doubtful case, to insist upon the discharge of the duties of the President. A case can hardly be imagined of inability which would not be temporary, and the Vice-president would have no temptation to thrust himself into the discharge of the duties of the office of the President, wherein he could do nothing by possibility that would be permanent, and without surety that his powers to discharge those duties would last for a single day. He might nominate a few officers, but if he had thrust himself into the discharge of the Presidential duties wrongfully, the Senate would never confirm his nominations. He might approve laws, but the Houses of Congress will never send any acts to a Vice-president for approval who should decide the question of the inability of the President in a manner to shock the sense of the people.

The fact that, upon the death of President Harrison, Mr. Tyler took the oath of office as President, and claimed to be and was recognized by Congress as President, apparently misled those who have the fears that I have indicated.

Mr. Tyler, after the death of the President, was to "exercise," by the words of the Constitution, the office of President for the

remainder of the term of four years, and there was no harm in recognizing him as President, as he was *de facto* and *de jure*, if not in name.

The cases of Fillmore and Johnson followed that precedent, which was not a precedent in case of temporary inability, the President being alive.

Every man fit to occupy the office of Vice-president would reluct with the strongest possible feeling of repugnance against undertaking the discharge of the duties of President so long as the question of the extent in degree, and as to duration the time, of a supposed inability of the President remained uncertain. But it would be his pleasure, if not his duty, to wait until some emergency arose where Presidential action was necessary for the safety of the Government or its citizens before he would consent to act; but in any emergency it would be his imperative duty to act, whatever might be his wishes or desires, and to act only so long as the inability continued, or perhaps only until the emergency had passed.

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MR. DWIGHT.

IN considering the question of Presidential inability under the provisions of the United States Constitution, there are three leading inquiries: I. What is "inability"? II. By whom is the fact of its existence to be decided? III. What is its effect, when established, upon the continuance of the President in office?

I. Before examining the first question, it is proper to state that words in the Constitution are not in general used in a popular, but rather in a legal, sense. The meaning of the words is to be taken from the English common law. The Constitution has been aptly termed an "instrument of enumeration and not of definition." Accordingly, when provision is made for the tenure of the President's office, words well known to English common-law jurists are used. The true signification of inability cannot be ascertained without bearing this fact in mind.

The text of the Constitution is as follows:

"In case of the removal of the President from office, or of his death, resignation, or *inability* to discharge the powers and duties of the said office, the

same shall devolve on the Vice-president, and the Congress may by law provide for the case of removal, death, resignation, or *inability* both of the President and Vice-president, declaring what officer shall then act as President, and such officer shall act accordingly until the *disability* be removed or a President shall be elected."—*Article II., Section* 1, *Subdivision* 6.

It will be observed from the words italicized that "inability" and "disability" are used as equivalent expressions. To constitute a case of "inability," there must be a "disability."

Now, disability to transact business, or to hold or perform the duties of an office, has been well defined in the rules of the common law, and its meaning was perfectly understood by the framers of the Constitution.

Consult such an old work of good repute as Jacob's Law Dictionary, and you will find "disability" in law defined as an *incapacity* in a man to inherit lands or to take that benefit which otherwise he might have done. It is added that this may happen in several ways, as by the act of an ancestor, or of the party himself, by the act of God, or of the law. Disability includes such cases as attainder for treason, insanity, alienage, etc. The term will in like manner apply to one holding an office. There is a close analogy between disability in this case and one involving an incapacity to make a conveyance. Thus there was an old rule of law that a grantor in a conveyance could not, in some instances, plead in court his own incapacity, to avoid the effect of his grant. In legal phrase, he could not "stultify himself." This rule was applied in Lord Holt's time to an office-holder, and the office-holder could not himself say that he was such an idiot or fool that he could not perform the duties of the office, so as to avoid an act done by himself. (King *v.* Larwood, Carthew's R., p. 306. A. D. 1694.) There might be a disability in a monarchical government which could not exist here, as, for example, infancy, such as occurred in the reign of Henry VI.

This technical meaning of "disability" is the only safe one to adopt. To take "inability" or "disability" in a popular sense would be to enter upon a shoreless sea of conjecture. In a legal sense, an officer cannot be disabled except for clearly defined causes. In general, therefore, there must be intellectual incapacity, such as is recognized in a court of law as unfitting a man to make a grant.

A good illustration of the length to which even able men will go when they consider official inability from a merely popular

point of view is found in the over-subtle theory of Sancroft, Archbishop of Canterbury, when King James II. fled the kingdom. Being a high Tory, he would not listen to the Whig notion that the King had abdicated his sovereignty, and that the throne was vacant. No; James was still King, but he was in a state of "inability." Being in this condition, a deputy, according to English views, might sign official papers in his name, and generally act in his behalf. His reasoning curiously resembles that of some modern writers, and will bear quotation. He says:

"The political capacity or authority of the King and his name in the government are perfect, and cannot fail; but his person being human and mortal, and not otherwise privileged than the rest of mankind, is subject to all the defects and failings of it. He may, therefore, be *incapable* of directing the government and dispensing the public treasure, etc., either by absence, by infancy, lunacy, deliracy, or apathy, whether by nature or casual infirmity, or, lastly, by some invincible prejudices of mind, contracted and fixed by education and habit, with unalterable resolutions, superinduced in matters wholly inconsistent and incompatible with the laws, religion, peace, and true policy of the kingdom. In all these cases (I say) there must be some one or more persons appointed to supply such defect, and vicariously to him and by his power and authority to direct public affairs."

This nonsense of a King being under a theoretical incapacity, while as a man he was intellectually capable, imposed upon no one but Sancroft himself, and others equally prejudiced. The common sense of England asserted that no deputy should be appointed over a King unless he was intellectually incapable. Lord Macaulay states correctly the prevailing English rule. "It was universally acknowledged that, when the rightful sovereign was intellectually incapable, a deputy might be appointed to act in his stead." It may be safely concluded that this, and no more, is intended by the United States Constitution.

If there be mere physical inability, the case would seem to be free from real difficulty. If the President's hand be, for example, disabled so that he cannot sign official papers, it would be ridiculous to say that there was a constitutional "inability." The real test of inability is, whether he has intellect enough to preside over the transaction. One who signs in his name, and in his presence, at his request, may fairly be regarded as his instrument, and the act done be regarded as his act. At all events, it would seem that Congress might authorize such a signature, in accordance with well-established English precedents, as applied

to royal acts. This rule was applied by Parliament in the reign of George IV., who in the latter part of his reign had found it inconvenient and painful to subscribe with his own hand. The King was authorized to empower by warrant or commission one or more persons to affix, in his presence and by his command, signified by word of mouth, the royal signature by means of a stamp. It was distinctly understood that the King's indisposition was merely physical, and that the proceedings then adopted should not thereafter be drawn into a precedent if the mind of any future King should become affected. (24 Hansard Debates, New Series, 986, 1062, etc., etc.) There are still earlier instances in which English Kings—as Henry VIII., Edward VI., and William III.—caused their names to be affixed by a stamp, without Parliamentary sanction. These are no longer followed in England. It is a significant fact, shown by the debates in the Convention that framed the Constitution, that the delegates determined to leave the provision under consideration as it stands, notwithstanding an objection that the word "disability" was obscure. Thus, on the 27th of August, Mr. Dickinson remarked that the clause was too vague. "What," he said, "is the extent of the term 'disability'? and who is to be the judge of it?" (5 Elliott's Debates, 480, 481.—Lippincott, A. D. 1876.) This suggestion produced no effect. There can be no other explanation of the retention of the clause except that the Convention thought the term disability sufficiently clear under the rules of the English common law, and that there were sufficiently precise methods of ascertaining its existence.

II. The mode of establishing or proving intellectual incapacity as a disability is not pointed out in the Constitution. Still, it is quite apparent that there must have been an intent on the part of its framers to have the existence of the fact established in some authentic way. Here are four distinct facts, upon the occurrence of which the Presidential office may devolve upon a successor. These are removal from office, death, resignation, and inability. Each of these, being facts, is susceptible of proof. Nay, more, they *must* be proved before it can be known authentically that there has been a devolution of office. The presumption is that the President is not removed from office, is not dead, has not resigned, and is not in a condition of inability. The burden of proof rests upon any person who asserts the contrary. Suppose that the Vice-president should be

an ambitious man, eager to occupy the Presidential seat, and should issue an order as commander-in-chief to the general of the army. Will that functionary obey the order without evidence of the existence of inability? If the President is removed from office, there must be a record of the judgment of removal; if he has resigned, there must be evidence of the resignation. Why must not there be in like manner evidence of inability? Nothing is better settled than the principle that the legislature has complete power over the whole subject of evidence, so far as their exercise of it does not violate vested rights, or subvert some fundamental principle of government. Congress, accordingly, has plenary power to enact rules for proving the fact of inability. The *definition* of the term "inability" is not within the sphere of legislation. That is a judicial question. How to establish its existence is a legislative matter, under the rules of evidence, involving, as it may, the tranquillity, and, perhaps, even the existence of the Government.

It would follow that some proper legal proceeding might be instituted by Congress, in which the evidence required by law might be presented under the general power to carry into execution all powers vested by the Constitution in any department or officer of the Government. (Art. I., sec. 8, clause 18.)

This question of proving the existence of mental inability arose in the case of George III., in England. In November, 1788, that monarch having been for some time absolutely incapacitated by insanity from doing a valid act, proceedings were taken to set up a regency. In order to establish legally the fact of incapacity, a meeting of the Privy Council was called, attended by all the Privy Councilors, at which the King's physicians, being examined, unanimously agreed that the King was wholly incapable of meeting Parliament or attending to public business. They believed in the probability of his ultimate recovery, but could not limit the time. This official examination into the case was laid, by the president of the council, Lord Camden, before Parliament. As there were doubts whether Parliament ought to be satisfied without receiving the personal testimony of the physicians, a committee was appointed in each House, who, having heard the physicians, confirmed the previous report. Mr. Pitt in the course of the proceedings moved three resolutions, the first of which affirmed that the personal exercise of the royal authority was interrupted. On this basis were founded

the two others, asserting the rights of the two Houses to supply the defect, and the necessity of providing a mode of giving the royal assent to bills passed by the Houses.

The important point in these proceedings is, that incapacity was decided on competent evidence before a legitimate tribunal, Parliament, who disposed of it as a matter of fact. So when a similar question arose in 1810, the ministers, following the precedent of 1788, proposed three resolutions, the first of which affirmed the King's incapacity, while the others, as before, asserted the power of the Houses, and the necessity of its exercise.

There was at this time a highly irritating controversy upon the point whether the Prince of Wales was *entitled* to the regency. Into the merits of this question it is not necessary to enter. No one of his most violent partisans ventured to maintain that he could decide the question of incapacity. The most extreme position taken in his favor was that he might assume executive functions on *an address* or resolution of the two Houses instead of by *bill.* The latter method was adopted. Had the Prince of Wales, under bad advice, ventured to grasp the reins of power without Parliamentary sanction in some form, and had been sustained by his party, he would apparently have dragged the country to the brink of a revolution. There is, however, a greater difficulty in such cases in invoking the act of Parliament than that of Congress. The King is, himself, a necessary element in constituting a Parliament. This is not true of the President in his relations to Congress. Still English statesmen, according to this precedent, will not dispense with the sanction of the two Houses of Parliament, though it is only by the merest fiction that the assent of an insane King can be given to the appointment of a regent to act in his stead. Though these proceedings do not directly affect the construction of our Constitution, since they took place after its adoption, yet they are highly instructive, as showing the views of English lawyers, of consummate learning and ability, on the correct method of establishing under the common law executive inability.

If this view is not sound, what is the dangerous alternative? The successor may decide absolutely as to the incapacity of his predecessor in office. Can it be that the wise men who framed our Constitution had any such intent? Our Vice-president may at one time be a Henry Wilson, at another, an Aaron Burr. Re-

member, that a President alleged to be incapable is still a President, apparently in office. Suppose that he thinks that he is not incapable? Who shall decide between the real and the phantom President? Who shall give orders to the army? Who shall open the penitentiaries by the pardon of criminals? Unless Congress may establish conclusively the laws of evidence on this subject, our written Constitution becomes an unyielding weapon for our destruction, instead of an invincible shield for our protection. The conclusion seems to be that Congress may either fix a rule of evidence in the particular case in which inability is claimed, and if that be established, perhaps address the Vice-president to assume the duties or office of President, or may pass general rules, framed to meet such contingencies as may from time to time arise.

III. The final point concerns the effect of inability. Here there is a most marked distinction between the English system and our own. Inability of a King introduces a regency, which is in its theory temporary. Recovery from a supposed hopeless insanity by a monarch displaces the regent. In the United States it is otherwise. The framers of the Constitution desired, as far as possible, to avoid a state of affairs resembling a regency. This is clearly shown by the provision already cited. Its language is: "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, *the same* shall devolve on the Vice-president."

There may be a question whether the words "the same" refer to "the powers and duties of the office," or to the office itself. The latter would appear to be the correct construction. There are four cases to which the words "the same" apply with equal force: (1) removal from office; (2) death; (3) resignation; (4) inability. What "devolves" on the Vice-president in the first case, devolves in each of the others. In case of the President's removal from office it will scarcely be denied that the office devolves. So it must be in cases of death and resignation. Why not then in case of inability?

Some light is shed upon the true construction of this portion of the Constitution by its history. At first (see Convention debates of August 6th), it was presented in the following form: "In case of his removal, death, resignation, or disability to discharge the powers and duties of his office, the president of the

Senate shall *exercise those powers and duties* until another President of the United States be chosen, or until the disability be removed." (5 Debates, 330.) Observe that the words are confined specifically to powers and duties, and the functions of the president of the Senate are distinctly temporary. The report of a committee on September 4th pursues the same form of words, except that the Vice-president is substituted for the president of the Senate. (Debates, 507.) Then, on September 7th, were added the words: "The legislature may declare by law what officer of the United States shall act as President in case of the death, resignation, or inability of the President and Vice-president, and such officer shall act accordingly until the disability be removed, or a President shall be elected." (Debates, 520, 521.) This added clause remained in substance in the final revision. The first branch of the paragraph was recast. The specific reference to powers and duties was deliberately rejected, as well as the words "until the disability be removed." The word "exercise" was dropped, and "devolve" substituted. No one free from bias can read the debates of the Convention without a strong feeling that, when it was finally determined that there should be a Vice-president, instead of a mere president of the Senate, it was the general desire that he should be an officer of great dignity and consequence, in case of a Presidential emergency. To this feeling the changes in phraseology which have been referred to are doubtless to be attributed.

The contemporaneous exposition of the words used corresponds with this view. In the debates of the Virginia convention called to consider the proposed Constitution, Mr. Monroe, while criticising it, raised the objection that the Vice-president was to *succeed* the President in case of disability. To this Mr. Madison, who had much to do with the clause under discussion, and who was swift to answer unfounded criticisms, made no reply. (3 Elliott's Debates, 490.) The same position is taken in Mr. Luther Martin's letter. His words are: "As to the Vice-president, that great officer of government, who is, in case of the death, resignation, removal, or inability of the President, *to supply his place*, and be vested with his powers," etc. (1 Debates, 378.)

Reference may also be made to the Twelfth Amendment to the Constitution, as showing the opinion of leading statesmen when that was adopted. The last clause of the first section of the amendment provides that if the House of Representatives

shall not choose a President before the fourth of March, in the case where they have the power of choice," the Vice-president shall act as President, as in the case of the death or *other constitutional disability* of the President." In this case it is manifestly intended that the Vice-president shall be President for the entire term, and all the constitutional disabilities, including death, are treated as being precisely similar in their effect. The thought would have been complete if only these words had been used: "As in the case of the death of the President." If the words "other constitutional disability" vary the sense, and refer to a temporary function of the Vice-president, the Twelfth Amendment results in a jumble of words, without consistency of meaning. This amendment was recommended by the Eighth Congress, and its ratification announced September 25, 1804, while the debates upon the Federal Constitution were yet fresh in the minds of our statesmen, and when a mistake in the effect of a Presidential inability could scarcely have taken place.

The result is that, in case of the disability of the President, the Vice-president becomes President with all the functions of the office. What can take the office away from him? Nothing in turn but *his* death, removal from office, resignation, or inability — not the removal of the disability on the part of the former President by reason of which he succeeded to the Presidential office. The Constitution means that there shall be no interregnum except in one case, and that is where *both* the President and Vice-president are under disability in the cases therein specified. Then alone is there to be an acting President, as distinguished from a true President, Congress then having power to treat the office as *vacant*, and to provide for an election to fill it. An acting President is accordingly necessary until the vacancy is filled by election, or, if there be no election, until the disability is removed. Consider for a moment the effect of the "regency" theory. In a monarchical government, owing to the life tenure, a regency is sometimes unavoidable, however injurious to the nation it may be. The King must rule until he dies. On recovery from the worst form of insanity he must resume his royal functions. But in a government for a fixed term of years there is no such necessity. The term of office may easily be made to terminate before its regular period by the happening of an untoward event such as inability. Adopt the "regency" view and the evils may be manifold. Suppose that there be a case of intermittent insanity

during a Presidential term of four years; when the first attack supervenes, the Vice-president becomes temporary President. The policy of the Government perhaps changes. He may be of a different party even from the President. The President recovers and resumes his seat with the old policy restored. This might happen several times in the course of a single four years' term. It is unnecessary to suggest the injurious effect upon our foreign and domestic relations of such fluctuations in policy during the fragmentary restorations of a mind in ruins.

But if the true sense of the clause under discussion be that in case of inability the powers and duties of the Presidential office, and not the office itself, devolve upon the Vice-president, the result is not materially different. How can the powers and duties, having once "devolved," be returned to the President in case the disability is removed? The Constitution is silent; the law knows no method of canceling a devolution and restoring the parties to their original position.

It may be asked, How could the framers of the Constitution have consented to pass the Government over from the President to the Vice-president, the former being presumably the people's choice? The answer is, that neither of them was then deemed to be the choice of the people, but rather that of the electors. When this clause came into the Constitution of 1787, the Vice-president must necessarily be a person who might have become President by the vote of the electors, and who was voted for by them, but who had not received votes enough to confer that office upon him. Even when the choice devolved upon the Senate, he must be selected by that body from the class of persons voted for by the electors as candidates for the Presidential office. He was likely to be a man of national eminence and of a high grade of statesmanship. The objections to devolving the office upon him in case of the President's inability were not deemed to be equal to the evils to be apprehended from fluctuations in policy or feebleness in government, likely to be incident to a mere temporary exercise on his part of Presidential power. If his power were temporary, might he not intrigue for its continuance, and thus cause political disturbance and commotion? Arthur Lee wrote to John Adams, in 1787, that the "sole business of a Vice-president seems to be to intrigue."

If he were to take the Presidential office at all, a strong point was to give him a fixity of tenure. When the methods of electing

the President and Vice-president were reduced to their present form, in 1804, the section under examination remained unaltered. The results of the discussion may now be briefly summed up. The "inability" of the Constitution is strict intellectual incapacity. This condition of mind must be established by evidence under forms of law, which Congress is competent to prescribe. When such inability is properly established in the case of the President, his office devolves upon the Vice-president, who thereupon becomes President, retaining the office until the end of the four years' term, unless a constitutional disability occurs in his case.

The people of the United States will not, in the absence of the clearest evidence of mental inability, be satisfied to part with the services of a President, at the present day, practically of their own choice, and to forego his share in legislation, his power to command the army and navy, his general authority in the enforcement of the laws, and to lose the benefit of his capacity to temper the administration of justice with the quality of mercy.

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